

# Adult Child Maintenance



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Many parents assume, mistakenly, that child support stops automatically when a child turns 18. Whilst this is true in many cases, if a child turns 18 before they complete their secondary education, a parent can apply through the Child Support Agency to have the administrative assessment continue until the end of the child's school year.

## BUT WHAT HAPPENS THEN?

What if the child wants to attend university or has a disability and further financial support is required? Well, the Family Law Act 1975 ("the Act") has provisions to address that issue.

Section 66B of the Act sets out the objects of child maintenance provisions. Essentially, it is to ensure that children receive a proper level of financial support from their parents. The liability for child support (or in this case, adult child maintenance) should be distributed equitably, not necessarily equally.

Section 66L of the Act says that a Court must not make a Child Maintenance Order in relation to a child who is 18 or over unless the court is satisfied that the provision of the maintenance is necessary:

- to enable the child to complete his or her education; or
- because of a mental or physical disability of the child.

In addition, the Court may make such a Child Maintenance Order, in relation to a child who is 17, to take effect when or after the child turns 18.

## MAKING A ADULT CHILD MAINTENANCE ORDER

The making of an Adult Child Maintenance Order remains a matter

of discretion, even if the terms of ss.66L(a) or (b) are met. A Child Maintenance Order ends upon the death of the child, the payer or person entitled to receive payments unless the Order provides otherwise (s.66U), if the child is adopted, marries or enters into a de facto relationship (s.66V) or if the child ceases the education or ceases to have the disability (s.66VA). Arrears of maintenance payable when the Order ceases to be in force may be recovered (s.66W).

In the recent Federal Circuit Court case of *Cumpton & Rainford [2020] FCCA 3441*, Judge Howard referred to the 2014 decision of Kent J in *Marlowe-Dawson v Dawson (No. 2)* and confirmed that in determining whether an application for adult child maintenance is 'necessary', the guiding principle is what, in all the circumstances, is 'reasonable'. Kent J also made it clear that an application under s66L must be determined in accordance with ss.66H, 66J and 66K of the Act which govern child maintenance generally. These sections set out what the Court needs to consider in considering the financial support necessary for the child and the contribution that each party should make.

## ADULT CHILD MAINTENANCE ENABLING COMPLETION OF EDUCATION

When determining whether maintenance is 'necessary' to complete education, the Courts look at factors such as:

- Whilst the term 'education' might of itself be broad, the connection between the course of education and prospects of employment might well bear upon the exercise of discretion.
- There is no need for a nexus between the kind of course for the completion of which maintenance is sought and the kind of earlier education – eg. if the child completed humanity subjects in secondary school but is applying to study science

at university.

Matters likely to bear upon the exercise of discretion include:

- Whether the child's independence on their parents had ceased and if the application amounts to a resurrection of that dependence;
- The time between when the dependence stopped and the application;
- Whether the child had completed the course of education intended by the parents to outfit them for employment sufficient to support themselves;
- Other assistance, benefits or education which the child has received;
- The ability of the child to complete the course in question;
- The likelihood of the child completing the course in question;
- The financial capacity of the child to maintain themselves to the completion of the education;
- The financial circumstances of those responsible for the support of the child; and
- The parental relationship between the child and the person from whom maintenance is sought.

### ADULT CHILD MAINTENANCE DUE TO DISABILITY

When determining whether maintenance is 'necessary' due to disability, the Courts look at factors such as:

- Maintenance meaning more than mere subsistence or necessities of life. It includes financial provision for all reasonable, current and likely future daily requirements including out of pocket, adequate housing, health and education-related expenses as well as any special needs.
- When considering a parent's capacity to pay, maintenance must first be considered. Periodic maintenance is normally preferred as this can be adjusted over time if the needs and circumstances of the parties require this. The main object of adult child maintenance is income, and not capital, focused.
- Finality cannot be achieved. The Order can last from five to ten years with the prospect of reviewing in the future.

### WHAT THE COURTS CANNOT TAKE INTO ACCOUNT

Whether it is an application for adult child maintenance to enable education or for a disability:

- When taking into account the income, earning capacity, property and financial resources of the child, the Court must disregard:
  - the income, earning capacity, property and financial resources of any other person unless, in the special

circumstances of the case, the Court considers it appropriate to have regard to them; and

- any entitlement of the child or any other person to an income tested pension, allowance or benefit.
- In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the Court must disregard:
  - Any entitlement of the child, or the person with whom the lives, to an income tested pension, allowance or benefit; and
  - The income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

As can be seen above, applying for adult child maintenance can be complicated. Ultimately, it may be the case that you have to consider a cost/benefit analysis of your personal circumstances to decide whether making an application is the right decision for you and your child. You certainly do not want to spend more on legal fees than you may ultimately receive from a Court Order.

In addition, there are significant non-financial burdens which an applicant or their child/children could face when making an application of this nature such as the damage that may be caused to the relationships between parents and children and the potential for an adult child to need to give evidence in such an application to the Court.

### WANT TO KNOW MORE?

If this article raises any questions for you, please do not hesitate to contact our office to speak with one of our family law team.

## GET STARTED

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any time with  
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